

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17639
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On April 29, 2003, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (petitioners), proposing use taxes, penalty, and interest for the periods 8/1997, 11/1997, and 9/2001 in the total amount of \$7,795.

The petitioners' protest letter dated January 15, 2003, was accepted as a petition for redetermination of the above NOD. The petitioners have not requested an informal hearing. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the deficiency determination.

The Commission's records show that the petitioners have filed Idaho resident income tax returns since at least 1995. On April 26, 2002, the petitioners did not have any passenger vehicles titled/registered in Idaho. Oregon motor vehicle records show that they had four motor vehicles titled/registered in Oregon under their personal names.

On April 26, 2002, TDB sent a letter to the petitioners, which stated in pertinent part:

Our records indicate that, at the time these vehicles were registered in Oregon, you were domiciled in Idaho.

Oregon motor vehicle records indicate these vehicles are registered in your personal name(s). While you may own property or conduct business in Oregon and thus title the vehicles in Oregon, *any* use of the vehicles in Idaho creates a use tax liability to this state (Idaho Code 63-3621). Idaho residents are required to pay Idaho use tax on all tangible personal property brought into this state unless they have already paid a general sales/use tax to another state or some other exemption provided by Idaho Code applies.

The sales/use tax is due the State of Idaho on these vehicles unless some other exemption applies. Enclosed are copies of our form, Notice of Sales/Use Tax Due, to assist you in computing the tax and interest due on each vehicle.

If this information is not correct, please explain clearly what exemption to Idaho use tax applies. Please send your response to me by May 20, 2002. . . .

TDB received a letter from [Redacted] dated May 20, 2002, in which he stated in pertinent part:

I am representing [Redacted] who are shareholders, directors and officers of the corporation. Reference is made to an undated letter which you sent to them at their [Redacted], Idaho residence address regarding four vehicles which are shown in the Oregon motor vehicle records as belonging to [Redacted].

For your information, those four vehicles belong to the corporation but are registered in [Redacted] individual name because they were required to do that for financing purposes. When those vehicles were purchased, the loan was made to [Redacted] individually because he could qualify for individual loans that were on more favorable terms than could be obtained for the corporation.

[Redacted] has conveyed these vehicles to the corporation and when they are paid for and the titles are released, then they will be transferred to the corporation. Meanwhile, they are listed on the corporation depreciation schedule as assets of the corporation, they are insured, maintained and licensed by the corporation and the corporation is making the payments on the loans that are held in [Redacted]'s individual name.

In other words, these are not personal vehicles but are corporation vehicles belonging to an Oregon corporation and therefore the sales/use tax for Idaho should not apply.

On July 29, 2002, TDB sent the petitioners a letter that acknowledged TDB had received their attorney's letter. TDB reaffirmed its position that use tax was due from the petitioners even if corporation funds were used to pay for the motor vehicles because the motor vehicles were titled and registered in their personal names.

A NOD was issued to the petitioners on November 20, 2002, that included the following motor vehicles and recreational vehicle:

<u>Tax Due Date</u>	<u>Year</u>	<u>Make/Model</u>	<u>VIN</u>	<u>Comments</u>
8/1997	1996	Toyota/LCW	[Redacted]	Disagreed tax due
11/1997	1996	Yamaha/ATV	[Redacted]	Agreed tax due
11/1997	1995	Ford/Explorer	[Redacted]	Disagreed tax due
11/2000	2000	Ford/Excursion	[Redacted]	Agreed tax due
9/2001	2001	Ford/F6S Tk	[Redacted]	Disagreed tax due

All vehicles above were titled and registered in Oregon, a state that does not impose a sales/use tax. All vehicles above were titled and registered in the petitioners' personal names.

The petitioners protested the original NOD in a letter dated January 15, 2003, which stated in pertinent part:

Please consider the following:

There are 4 vehicles in Question and 1 ATV. The 4 vehicles in Question were purchased with company money of an Oregon Corporation. They were however purchased on Credit and personal credit information was used to secure the loans. The ATV was purchased with personal money and should be subject to taxes. We were not aware that the vehicles were titled under our personal names until the Notice of Deficiency was received. We do not believe that an Oregon Corporation should be subject to Idaho Sales Tax. Our two stores are from [Redacted], and these vehicles are used back and forth between the two stores and around the State of Oregon doing sales calls. Many of these vehicles have never ever been brought into Idaho. The Ford Excursion however does get brought over from time to time, and that vehicle we both agree also should be taxed.

On April 14, 2003, TDB sent the petitioners a letter regarding the NOD issued to them on November 20, 2002. TDB informed the petitioners that the information they submitted in their letter of protest dated January 22, 2003, had been reviewed and was sufficient to allow TDB to readdress the tax issues involved. The petitioners had indicated in their letter that they were in agreement that the 2000 Ford Excursion and the 1996 Yamaha ATV were subject to use tax. TDB informed the

petitioners that they would receive a separate billing letter for the amount due on these two vehicles. The petitioners have paid-off this portion of their use tax liability.

TDB also informed the petitioners that the information they provided was not sufficient to satisfy the issues surrounding the 1996 Toyota LCW, the 2001 Ford truck, and the 1995 Ford Epr (Explorer). TDB informed the petitioners that the NOD issued on November 20, 2002 for the sales and use taxes for all of the five vehicles was canceled and they would receive a new NOD for these three remaining vehicles. TDB accepted the petitioners' letter of January 22, 2003 as a valid protest for this new NOD.

TDB's April 14, 2003 letter addressed to the petitioners' street address was returned so the letter was resent on April 18, 2003, to the petitioners' P.O. Box address.

A new NOD was sent to the petitioners on April 29, 2003, for the three remaining motor vehicles.

On April 29, 2003, TDB sent the petitioners a letter notifying them that their protest postmarked January 22, 2003, was a timely petition for redetermination of the NOD dated April 29, 2003. TDB informed the petitioners that their protest would be retained by TDB to allow them an opportunity to provide additional information to support their claim that these vehicles had never entered the state of Idaho. The petitioners did not provide any evidence that the remaining three vehicles were not used in Idaho, so the petitioners' file was forwarded to the Commission's Legal/Tax Policy Division for further review.

On October 16, 2003, the Tax Policy Specialist (policy specialist) sent the petitioners a hearing rights letter to inform them of their alternatives for redetermining a protested NOD.

On October 30, 2003, the policy specialist sent the petitioners a letter which stated in pertinent part:

I have reviewed your file and found that I need some additional information concerning the three motor vehicles referenced in the Tax Commission's Notice of Deficiency Determination dated April 29, 2003. A letter dated May 20, 2002 from your attorney, [Redacted] stated:

[Redacted] has conveyed these vehicles to the corporation and when they are paid for and the titles are released, then they will be transferred to the corporation. Meanwhile, they are listed on the corporation depreciation schedule as assets of the corporation, . . .

Please send me all documents associated with the conveyance of these vehicles to the corporation. In addition, I also need copies of the corporation's [Redacted] income tax returns for years 1995 through 2002.

The petitioners did not provide any documents associated with the conveyance of the motor vehicles to the corporation.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. In such cases, the burden is upon the petitioners to show that the deficiency determination is incorrect. See Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 574-575, 716 P.2d 1344 (App. 1986).

Besides taxing retail sales, Idaho's Sales Tax Act also imposes an excise tax on the storage, use, or consumption of tangible personal property in Idaho. Idaho Code § 63-3621 (1997) provided in part:

An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after July 1, 1965, for storage, use, or other consumption in this state at the rate of five per cent (5%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property unless the property is wireless telecommunications equipment, in which case a recent sales price shall be conclusive evidence of the value of the property.

The use tax acts as a counterpart to the sales tax by reaching property used in Idaho but purchased free from tax in this state or in other states. It applies to "every person storing, using, or otherwise consuming, in this state, tangible personal property," and the person's liability is not extinguished until the tax has been paid to this state. Idaho Code § 63-3621(a). It is the physical presence of the property within the state which provides sufficient nexus to justify the assessment of use taxes, without regard to whether the person is a resident or nonresident of the state. See, for

example, Towle v. Commissioner of Revenue, 492 N.E.2d 739, 743 (Mass. 1986), ruling that the state could constitutionally impose use tax on a sailboat temporarily stored within the state by a nonresident: "There is no constitutional problem with a State's imposing a tax on property used in that State, but purchased elsewhere."

The terms "storage" and "use" are broadly defined by Idaho Code § 63-3615. Storage includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside the state of tangible personal property purchased from a retailer. Use includes the exercise of any right or power over tangible personal property incident to ownership of the property. The terms do not include the sale of tangible personal property in the regular course of business or storage or use for the purpose of subsequently transporting the property out of Idaho for use solely outside this state.

Because of the obvious difficulties in tracking personal property entering and leaving the state, Idaho Code § 63-3621(h) provides that "[i]t shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer, for storage, use or other consumption in this state." This presumption applies in this case to any motor vehicles and recreational vehicles brought into Idaho by the petitioners. In construing a similar statutory presumption contained in the Massachusetts' sales and use tax act, that state's Supreme Court held that a bare assertion by the taxpayer that, at the time of purchase, he did not intend to use the property in the state was not sufficient to rebut the presumption. M & T Charters v. Com'r of Revenue, 533 N.E.2d 1359, 1361-62 (Mass. 1989).

In summary, any tangible personal property brought into this state by any person (resident or nonresident) is presumed to have been brought into this state for storage or use here and is subject to use tax.

It is undisputed that petitioner has not filed sales tax returns.

Idaho Code § 63-3634 states that the enforcement provisions of the Income Tax Act apply to the Sales Tax Act.

Thus, as a matter of law, the Sales Tax Act required that the petitioners file a use tax return on the succeeding month.

In Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983), the Idaho Supreme Court addressed whether the taxpayer was required to pay interest, the Court said:

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St. Louis, 368 S.W.2d 161 (Mo. 1963); see generally 85 C.J.S. Taxation, § 1031(c) (1954). We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that 'interest . . . shall be assessed' and 'shall be collected.' This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute. Therefore, as to the interest issue we reverse with directions for the trial court to award interest from 1942.

The petitioners filed Idaho resident income tax and titled the vehicles in their own names as individuals. It is presumed therefore that the petitioners are Idaho residents, that the petitioners own the vehicles, and that the vehicles were purchased for use in Idaho. The taxpayers have not provided any evidence to the contrary and therefore have not met the burden of proof in this case.

WHEREFORE, the Notice of Deficiency Determination dated April 29, 2003, is hereby APPROVED, AFFIRMED AND MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that the petitioners pay the following taxes, penalty, and interest:

<u>PERIOD</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTALS</u>
8/1997	\$2,005	\$501	\$1,015	\$3,521
11/1997	1,004	251	484	1,739
9/2001	2,000	500	373	<u>2,873</u>
			TOTAL	<u>\$8,133</u>

Interest is computed through September 5, 2004.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioners' right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2004, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[REDACTED]

Receipt No.